IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 20. 9.2010

(I) Crl.Appeal No.458-SB of 2002

Surjit Kaur and others

... Appellants

versus

State of Punjab

... Respondent

(II) Crl.Revision No.1800 of 2002

Jarnail Singh

... Petitioner

versus

Surjit Kaur and others

... Respondent

CORAM: HON'BLE MR. JUSTICE JORA SINGH.

Present: Mr.Aditya Sanghi, Advocate, &
Mr.Aditya Pal Singla, Advocate,
for the appellants.
Mr.Arshwinder Singh, DAG, Punjab.
...

JORA SINGH, J.

Crl.Appeal No.458-SB of 2002 was preferred by Surjit Kaur, Jaswinder Singh and Kesar Singh to impugn the judgment of conviction and order of sentence dated 11.3.2002 rendered by Additional Sessions Judge, Ludhiana, in Sessions Case No. 13 dated 3.2.2000, arising out of FIR 94 dated 29.8.1999 under Sections 498-A/ 304-B IPC, Police Station Sahnewal.

By the said judgment, they were convicted under Section 304-B IPC and sentenced to undergo RI for eight years each.

Crl.Revision No.1800 of 2002 was preferred by Jarnail Singh,

complainant, for enhancement of sentence and to pay compensation to the tune of Rs.5,00,000/-.

Prosecution story, in brief, is that SI Dogar Ram received telephone call from Balbir Singh, Sarpanch, r/o Village Upplan, regarding death of Balwinder Kaur in road side accident. After telephonic message, police party headed by SI Dogar Ram had gone to Village Upplan. Jaswinder Singh, his father, Balbir Singh, Sarpanch of Village Upplan, and some other persons were also present there and in their presence, Jaswinder Singh reported to the police on 29.5.1999 that he was running a karyana shop in the village. He has one brother and three sisters. About 7 years back in the month of February, 1998, he was married with Balwinder Kaur d/o Jarnail Singh, r/o Village Chhotran, and from this wedlock, there was one son born in the month of December, 1998. His son was not keeping good health and was under treatment. Today, i.e., 29.5.1999, at about 9.00 AM, he along with his wife Balwinder Kaur and son on a scooter had gone to Bhaini Sahib. After getting treatment while they were returning to their village and were in the area of Village Panjetha at about 10.15 AM, then his wife, who was on pillion, had a fall from the scooter on the road. She received injuries on the occiput and back. Amrik Singh son of Prem Singh, r/o Village Upplan, came at the place of accident. Then he along with Amrik Singh had shifted his wife to Indira Hospital, Machhiwara. Keeping in view the condition of Balwinder Kaur, doctor of Indira Hospital, Machhiwara, directed him to shift Balwinder Kaur to Arora Neuro Centre, Ludhiana. Then, Balwinder Kaur was shifted to Arora Neuro Centre, Ludhiana. After admission in the hospital, treatment was given. At about 12/12.30 (noon), Balwinder Kaur had succumbed to her injuries. His father

and father-in-law Jarnail Singh along with some other persons came to Arora Neuro Centre, Ludhiana. Dead body was brought to his village. Statement (Ex.PG) was read over and explained to Jaswinder Singh, who had signed the same in token of its correctness. After making endorsement at 7.00 PM, statement was sent to the police station, on the basis of which, DDR No. 23 dated 29.5.1999 (Ex.PG/2) was recorded.

On 29.8.1999, Inspector Manjit Singh, SHO, PS, Sahnewal, was present near main chowk, Sahnewal. Jarnail Singh, father of Balwinder Kaur, had met the police party and reported to the police that he was the resident of Village Chhotran. He has 4 sons and 4 daughters. Balwinder Kaur was married to Jaswinder Singh on 7.2.1998. Balwinder Kaur has one son, born in the month of December, 1998. Delivery was in Civil Hospital, Samrala. Death of Balwinder Kaur was on 29.5.1999. He was suspecting that death of Balwinder Kaur was by administering some poisonous substance or by causing injuries by her mother-in-law Surjit Kaur, father-in-law Kesar Singh and her husband Jaswinder Singh, because cousin brother of Jaswinder Singh was married 4 months earlier to the death of Balwinder Kaur. In laws of cousin brother of Jaswinder Singh gave sufficient dowry. After marriage, in-laws of Balwinder Kaur started misbehaving and harassing her for want of dowry. In-laws demanded Rs.20,000/- from Balwinder Kaur for house. Despite payment, at the time of lohri festival, in-laws of Balwinder Kaur demanded cooler and fridge. Regarding demand of cooler and fridge, he had informed his sons and reply of his sons was that at the time of lohri festival, they were to consider the demand of cooler and fridge. One week earlier to her death, Balwinder Kaur came to her parental house and informed that her father-in-law had thrown plate of chappatis on

her face. Later on, Kesar Singh had felt sorry by saying that incident be not brought to the notice of her parents. On 29.5.1999, Surjit Kaur, mother-in-law of Balwinder Kaur, came at 11.00 AM and informed that Balwinder Kaur had a fall from the scooter near Village Panjetha and received injuries. Balwinder Kaur was shifted to Arora Neuro Centre, Ludhiana. After that, they had gone to Arora Neuro Centre, Ludhiana, where dead body of Balwinder Kaur was found lying. Statement (Ex.PE) was read over and explained to Jarnail Singh, who had signed the same in token of its correctness. On the statement, endorsement (Ex.PE/1) was made to the effect that earlier DDR No.23 dated 29.5.1999 was recorded. Viscera was sent to the office of Chemical Examiner, Patiala. As per report of Chemical Examiner, death was due to Aluminium Phosphide. After endorsement at 12.30 PM, statement was sent to the police station, on the basis of which, formal FIR (Ex.PE/2) was recorded.

After statement of Jaswinder Singh (Ex.PG), Jaswinder Singh had produced dupatta of deceased before SI Dogar Ram, and the same was taken into police possession vide memo (Ex.PL). On 30.5.1999, Constable Niranjan Singh produced a salwar and a kameez of deceased before SI Dogar Ram and the same were taken into police possession vide memo. After preparing inquest report, dead body was sent to Civil Hospital, Ludhiana, for postmortem examination.

After recording statement of Jarnail Singh (Ex.PE), Inspector Manjit Singh had gone to the spot. Rough site plan with correct marginal notes was prepared.

Supplementary statement of Jarnail Singh was recorded on 11.9.1999. On 6.10.1999, Jaswinder Singh and Kesar Singh were arrested.

After arrest of Surjit Kaur and completion of investigation, challan was presented in Court.

Accused were charged under Sections 498-A/304-B IPC, to which they pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined 8 witnesses.

PW1 Dr. Harjap Singh was the member of the Board and on 30.5.1999, the Board had conducted postmortem examination on the dead body of Balwinder Kaur and observed as under:-

"1. Swelling in an area of 2-1/2" x 2" on the prieto occipital area adjoining left to the mid line.

2. Abrasion superficial 1/2" x 3/4" and 3/4" x 3/4" on the left shoulder on superior aspect.

3. Oval contusion 1/4" x 1/4" on the lateral of left elbow with swelling around the back of the elbow joint.

4. Contusion 2-1/2" x 1" on the left side of upper part of abdomen.

5. Abrasion 2-1/2" x 3/4" on the lateral and upper part of left thigh."

Cause of death was kept pending and on receipt of report of Chemical Examiner, cause of death was due to aluminium phosphide and injuries to vital organs. Injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

PW8 Dr.S.K.Bansal from Arora Neuro Centre, Ludhiana, appeared and stated that on 29.5.1999, dead body of Balwinder kaur was brought to Arora Neuro Centre, Ludhiana, at 11.52 AM.

PW2 Jarnail Singh, father of Balwinder Kaur, reiterated prosecution story disclosed to Inspector Manjit Singh on 29.8.1999.

PW3 Sat Pal Singh is the brother of deceased. He has also supported the version of Jarnail Singh (PW2).

PW4 HC Manjit Singh stated that on 29.5.1999, one chunni was deposited with him by SI Dogar Ram. On 30.5.1999, SI Dogar Ram deposited a salwar and a kameez and the same were made into a parcel. On 6.10.1999, chunni, salwar and kameez were produced before Inspector Manjit Singh, SHO, and the same were made into a sealed parcel, sealed with seal bearing impression `MS'. Sealed parcel was taken into police possession vide memo (Ex.PF) attested by him.

PW5 Constable Niranjan Singh got conducted postmortem examination on the dead body of Balwinder Kaur from Civil Hospital, Ludhiana. After postmortem examination, doctor had handed over to him one sealed envelope containing postmortem report with some other papers, one sealed parcel containing viscera and one parcel of clothes worn by the deceased. Case property was produced before SI Dogar Ram and was taken into police possession vide memo attested by him. Parcel of viscera and sealed envelope were deposited in the office of Chemical Examiner, Patiala.

PW6 DSP Manjit Singh had partly investigated the case after SI Dogar Ram.

PW7 SI Dogar Ram had investigated the case at the initial stage.

After close of the prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C. They denied all the prosecution allegations and pleaded to be innocent.

Defence version of the accused was that Balwinder Kaur and Jaswinder Singh had gone to Bhaini Sahib on a scooter on 29.5.1999. On the way, Balwinder Kaur had a fall from the scooter and suffered injuries resulting in her death. Balwinder Kaur was not harassed. There was no demand of dowry or money at any stage.

In defence, DW1 Ravinder Singh, Inspector, Income Tax, produced record from the office of Deputy Commissioner of Income Tax in respect of Dr. S.K.Bansal c/o Arora Neuro Centre, Ludhiana. As per return for the assessment year 2000-2001, Dr. S.K. Bansal has not shown any salary income.

DW2 Dr. Sanjiv Aggarwal from Indira Hospital, Machhiwara, stated that on 29.5.1999 at about 11/11.30 AM, Jaswinder Singh and Amrik Singh brought Balwinder Kaur and informed that Balwinder Kaur had a fall from the scooter. She was unconscious. Balwinder Kaur had head injury. Keeping in view condition of Balwinder Kaur, patient was referred to Arora Neuro Centre, Ludhiana. Ex.DD was the reference slip.

DW3 Amrik Singh stated that on 29.5.1999, he was near Village Panjetha on a scooter, then noticed Jaswinder Singh and his wife Balwinder Kaur on scooter. Jaswinder Singh was driving the scooter. Balwinder Kaur had a fall from the scooter and suffered injuries on her head. She was also having a child. Condition of Balwinder Kaur was very serious. After parking his scooter, he along with Jaswinder Singh had shifted Balwinder Kaur to Indira Hospital, Machhiwara, on the scooter of Jaswinder Singh. Incident was brought to the notice of doctor. Condition of Balwinder Kaur was critical and she was referred to Arora Neuro Centre, Ludhiana. Sumo was arranged by Jaswinder Singh and Balwinder Kaur was

shifted to Arora Neuro Centre, Ludhiana. He gave information at the house of Jaswinder Singh.

DW4 Balbir Singh, Sarpanch of Village Upplan, stated that Jaswinder Singh was married with Balwinder Kaur. Parents of Balwinder Kaur never complained about any maltreatment or harassment. About 2-1/2 – 2-1/4 years back, Jaswinder Singh came and informed about the death of his wife by fall from scooter. He was requested to inform the police. Police came to the house of Jaswinder Singh. At that time, father and brother of Balwinder Kaur along with some other respectable persons were also present. Parents of Balwinder Kaur did not state anything against the accused. Inquest report (Ex.PK) was prepared, which was signed by him. After postmortem examination, dead body was cremated. He had gone to Kiratpur Sahib, where last remains were to be immersed. At Kiratpur Sahib, parents of deceased started saying that they wanted to take back dowry articles. He requested them that after bhog ceremony, dispute regarding dowry would be solved. There was altercation amongst the parties at Kiratpur Sahib. Jarnail Singh threatened that he would see the other party. Jarnail Singh did not attend the bhog ceremony of the deceased.

After hearing learned Public Prosecutor for the State, learned counsel for the appellants and from the perusal of evidence on the file, appellants were convicted and sentenced as stated aforesaid.

I have heard learned defence counsel for the appellants, learned State counsel and have gone through the evidence on the file.

Learned counsel for the appellants argued that on 29.5.1999 at about 9.00 AM, Jaswinder Singh along with his wife Balwinder Kaur (deceased) and minor son had gone to Bhaini Sahib. Son of the deceased

was not keeping good health. After getting treatment from Bhaini Sahib, they were returning to their village. At about 10.15 AM, they were in the area of Village Panjetha, then his wife, who was on pillion, had a fall on the road. Jaswinder Singh was driving the scooter. Balwinder Kaur received injuries on the back side of her head and back. Amrik Singh son of Prem Singh, r/o Village Upplan, had witnessed the occurrence. After accident, Balwinder Kaur was shifted to Indira Hospital, Machhiwara, by Jaswinder Singh and Amrik Singh. Keeping in view the condition of Balwinder Kaur, doctor of Indira Hospital, Machhiwara, referred Balwinder Kaur to Arora Neuro Centre, Ludhiana. After arranging a vehicle, Balwinder Kaur was being shifted to Arora Neuro Centre, Ludhiana, but on the way, Balwinder Kaur had succumbed to her injuries. Amrik Singh had informed parents of Jaswinder Singh. Then Surjit Kaur had gone to the parental house of Balwinder Kaur and gave information that Balwinder Kaur received injuries by fall from a scooter. Balwinder Kaur was shifted to Arora Neuro Centre, Ludhiana. Father, brother and other relations of Balwinder Kaur were present in the hospital and in their presence, dead body was brought to Village Upplan. Sarpanch of Village Upplan on telephone had informed the police. Police party headed by SI Dogar Ram had gone to the house of appellants. After preparing inquest report, dead body was sent to Civil Hospital, Ludhiana, for postmortem examination and after postmortem examination, dead body was cremated in the presence of Jarnail Singh, father of the deceased, and other respectables of Village Upplan and Chhotran. For about 3 months, Jarnail Singh remained silent. Occurrence is dated 29.5.1999, whereas FIR is dated 29.8.1999. FIR was registered on the allegation that in-laws of the deceased used to harass and maltreat the

deceased for want of dowry. In case, appellants used to harass and maltreat the deceased for want of dowry, then at the time of cremation, Jarnail Singh or his relations could easily report to the police that during life time, Balwinder Kaur used to report them that she was harassed for want of dowry. Rs.20,000/- was demanded for a house. After death or at the time of cremation, there was no objection from the side of Jarnail Singh that appellants were harassing or maltreating the deceased for want of dowry. FIR was registered after receipt of report of Chemical Examiner, and report was to the effect that Aluminium Phosphide was detected but quantity of Aluminium Phosphide was not given. Chemical Examiner was required to report as to what was the quantity of Aluminium Phosphide administered to the deceased. Case is based on circumstantial evidence. No eye witness. When case is based on circumstantial evidence, then prosecution was required to lead cogent and convincing evidence as to what was the motive. Before the occurrence, no complaint to any authority. No letter from the side of deceased that she was harassed by the appellants for want of dowry. If during life time, Balwinder Kaur reported to her parents that she was harassed for want of dowry, then parents of Balwinder Kaur should have reported the matter to the police. There was no idea to remain silent. If report was not to be lodged with the police, then Jarnail Singh should have convened a panchayat. Demand of Rs.20,000/- for house is not to be treated as dowry. When there are two versions, then the version favourable to the appellants is to be accepted. According to the prosecution story, poisonous substance was administered as per report of Chemical Examiner and injuries were given, whereas defence version is that injuries were suffered by fall from the scooter. Aluminium Phosphide has pungent smell and cannot be

administered easily. No sign of resistance by the deceased. Deceased had one minor son and was residing happily at her in-laws house. Daily vegetables and fruits are given injections to increase production or early ripe. Before milching, injections are given to the cattle for producing more milk. In case of pure vegetarian if viscera is sent to the laboratory after death, then same report, i.e., presence of Aluminium Phosphide, would come. In the absence of report of laboratory as to what was the quantity of Aluminium Phosphide, report of Chemical Examiner is not helpful to the prosecution that poisonous substance was administered to the deceased. Defence version seems to be more probable than the prosecution.

Learned State counsel argued that marriage of deceased with Jaswinder Singh was solemnised in the month of February, 1998. Unnatural death on 29.5.1999. According to defence version, unnatural death due to fall from scooter, but defence version is not correct one. Appellants cannot back out from statement (Ex.PG) dated 29.5.1999. Version of Jaswinder Singh was that he along with his wife and son on a scooter had gone to Bhaini Sahib and while returning from Bhaini Sahib, Balwinder Kaur had a fall from the scooter. Son of Balwinder Kaur was hardly 6 months old, but no injury to 6 months' old son. Amrik Singh is from the village of the appellants. Version of Amrik Singh was that he had seen the occurrence and after Balwinder Kaur had received injuries by fall from the scooter, then he along with Jaswinder Singh had shifted Balwinder Kaur to Indira Hospital, Machhiwara, but the appellants are not clear where the minor son had gone. Minor son was in the lap of Balwinder Kaur and if Balwinder Kaur had a fall from the scooter, then son, aged about 6 months, was also expected to receive injuries. No explanation from the side of Jaswinder

Singh to whom minor son was handed over. Amrik Singh when appeared in defence, then stated that on the scooter of Jaswinder Singh, Balwinder Kaur and her minor son were shifted to Indira Hospital, Machhiwara. Balwinder Kaur after receipt of injuries was unconscious. Her condition was very critical. Then Amrik Singh was not in a position to hold Balwinder Kaur and her minor son while on pillion because Jaswinder Singh was driving the scooter. Second allegation of Jaswinder Singh was that from Indira Hospital, Machhiwara, Balwinder Kaur was referred to Arora Neuro Centre, Ludhiana. Ex.DD is the certificate of Indira Hospital, Machhiwara, but Ex.DD is not helpful to the appellants because name of patient was not written. Ex.DD is also silent as to who had brought the patient to Indira Hospital, Machhiwara, whether Jaswinder Singh or Amrik Singh. From Indira Hospital, Machhiwara, Balwinder Kaur was referred to Arora Neuro Centre, Ludhiana. As per Jaswinder Singh, vehicle was arranged, then Balwinder Kaur was brought to Arora Neuro Centre, Ludhiana. Balwinder Kaur was admitted in the hospital. Treatment was given but ultimately, death at about 12/12.30 (noon). Dr. S.K.Bansal from Arora Neuro Centre, Ludhiana, appeared as PW8 and stated that on 29.5.1999, dead body of Balwinder Kaur was brought at 11.52 AM. So after death on the way, there was no idea to admit in the hospital and give treatment. After death, intimation was given to the police. Then SI Dogar Ram had gone to the house of the appellants. Statement of Jaswinder Singh (Ex.PG) was recorded. Inquest report (Ex.PK) was prepared but SI Dogar Ram had not gone to the place of accident. Blood stained earth was not lifted from the spot. No explanation is forthcoming from the side of the appellants where the minor son had gone after the accident. No oral or documentary proof on

the file as to whether minor son was under treatment of any doctor at Bhaini Sahib. In fact story of accident was concocted to misguide the police and complainant party. Death was at the house of the appellants. Poisonous substance was administered and this fact is clear from the report of Chemical Examiner. Injuries noticed on the person of the deceased were ante mortem in nature. Appellants were to explain how unnatural death in the in-laws' house. If the complainant party was to implicate the appellants, then on 29.5.1999, Jarnail Singh could easily report to the police that Balwinder Kaur was being harassed for want of dowry but believing the version of Surjit Kaur as correct one, complainant party did not lodge protest. After receipt of report of Chemical Examiner, police was informed that at one time, Rs.20,000/- was demanded for house. Payment was made to Balwinder Kaur. After marriage of cousin brother of Jaswinder Singh when sufficient dowry was given, then appellants started misbehaving and harassing Balwinder Kaur for want of dowry. Cooler and fridge were demanded. No case of the appellants that Balwinder Kaur was not keeping good health and was under depression and committed suicide. When unnatural death due to injuries and Aluminium Phosphide and death was within 7 years from the date of marriage, then presumption is that dowry death.

As per prosecution story, Balwinder Kaur was being harassed for want of dowry. Poisonous substance was administered. Unnatural death within 7 years from the date of marriage. Harassment on account of dowry soon before the death, whereas defence version of the appellants was that on the day of occurrence, Balwinder Kaur and Jaswinder Singh along with their minor son had gone to Bhaini Sahib for treatment because their son was not

keeping good health. While returning from Bhaini Sahib, near Village Panjetha, Balwinder Kaur had a fall from the scooter and received injuries. Death was in road side accident. Now question is as to whether unnatural death was as per prosecution story or death was due to receipt of injuries by fall from the scooter.

Appellants are to be presumed innocent unless guilt is proved. Appellants were expected to remain silent. When examined under Section 313 Cr.P.C., then appellants could easily deny the prosecution allegation but once they have taken the plea that Balwinder Kaur received injuries by fall from the scooter, then defence version is to be scrutinized with great care and caution as to whether defence version is probable or false plea was taken.

On 29.5.1999, statement of Jaswinder Singh one of the appellants (Ex.PG) was recorded by SI Dogar Ram. SI Dogar Ram appeared as PW7 and stated that on receipt of telephone call from Balbir Singh, Sarpanch, he had gone to the house of Jaswinder Singh. Statement of Jaswinder Singh (Ex.PG) was recorded. After making endorsement, statement was sent to the police station, on the basis of which, DDR No. 23 dated 29.5.1999 (Ex.PG/2) was recorded. Inquest report (Ex.PK) was prepared. Jaswinder Singh had also produced dupatta of the deceased, which was taken into police possession vide memo (Ex.PL). On 30.5.1999, Constable Niranjan Singh produced before him salwar and kameej of the deceased, which were taken into police possession. No suggestion was given to SI Dogar Ram that Jaswinder Singh did not suffer statement (Ex.PG) or signatures of Jaswinder Singh were obtained on blank papers. Jaswinder Singh when examined under Section 313 Cr.P.C., then did not

state a word that his signatures were obtained on blank papers or he did not suffer statement (Ex.PG) before SI Dogar Ram. So, one thing is clear that on 29.5.1999, statement of Jaswinder Singh (Ex.PG) was recorded.

According to statement (Ex.PG), Jaswinder Singh along with his wife Balwinder Kaur and minor son at 9.00 AM had gone to Bhaini Sahib because his son was not keeping good health. After getting treatment from Bhaini Sahib, they were returning to their village. Jaswinder Singh was driving the scooter. At about 10.15 AM, they were near Village Panjetha, then Balwider Kaur fell down from the scooter and received injuries. Second allegation of Jaswinder Singh was that Amrik Singh came at the spot then with the help of Amrik Singh, Balwinder Kaur was brought to Indira Hospital, Machhiwara, on his scooter. Amrik Singh was on his scooter but no explanation where the scooter of Amrik Singh had gone. Marriage of Jaswinder Singh with Balwinder Kaur was on 7.2.1998. Birth of the first child was in the month of December, 1998. At the time of occurrence, son was about 6 months' old. Amrik Singh was on pillion of the scooter of Jaswinder Singh. According to postmortem report, number of injuries were noticed but very difficult for Amrik Singh to hold Balwinder Kaur and her son while on pillion when Balwinder Kaur was shifted to Indira Hospital, Machhiwara. When there were number of injuries and Balwinder Kaur was unconscious, then clothes worn by Amrik Singh were expected to be stained with blood. But no explanation why clothes of Amrik singh were not produced before the police, if Amrik Singh had witnessed the occurrence and had shifted Balwinder Kaur to Indira Hospital, Machhiwara.

From Indira Hospital, Machhiwara, Amrik Singh came back to

his village Upplan on the scooter of Jaswinder Singh, because Jaswinder Singh had arranged a vehicle to shift Balwinder Kaur to Arora Neuro Centre, Ludhiana. Nothing on the file how scooter of Amrik Singh from the place of occurrence was brought to Village Upplan and who had brought it. Amrik Singh while appearing as DW, then did not state a word that from Indira Hospital, Machhiwara, he had brought minor son, aged about 6 months, to village Upplan. While driving scooter, not possible to carry 6 months' old child. No explanation whether anybody was with Amrik Singh on the pillion to bring minor child of the deceased from Indira Hospital, Machhiwara, to village Upplan.

From Indira Hospital, Machhiwara, vehicle was arranged by Jaswinder Singh and Balwinder Kaur was shifted to Arora Neuro Centre, Ludhiana, where she was admitted and given treatment. That means, Balwinder Kaur was alive at the time of admission, that is why, she was given treatment at Arora Neuro Centre, Ludhiana. No one appeared in defence to state that he was the owner of the vehicle and his vehicle was hired by Jaswinder Singh to shift Balwinder Kaur from Indira Hospital, Machhiwara, to Arora Neura Centre, Ludhiana. Dr. Sanjeev Aggarwal from Indira Hospital, Machhiwara, appeared in defence and stated that on 29.5.1999 at about 11.00/11.30 AM, Jaswinder Singh and Amrik Singh brought Balwinder Kaur to Indira Hospital, Machhiwara. Suggestion was given that Balwinder Kaur received injuries by fall. Ex.DD is the reference slip. In cross-examination, he admitted that name of patient was not mentioned in Ex.DD. No injury report. Ex.DD is silent as to who had shifted Balwinder Kaur to Indira Hospital, Machhiwara. In fact, Ex.DD was created to show that it was a case of accident. Name of patient was not

mentioned, name of attendant was also not mentioned. Nothing in Ex.DD that patient was unconscious and was referred to Arora Neuro Centre, Ludhiana. Ex.DD simply shows name of Dr. J.P.Arora, Arora Neuro Centre, Fountain Chowk, Ludhiana, with three telephone numbers. Except name and telephone numbers, nothing else was written by Dr. Sanjeev Aggarwal.

From Indira Hospital, Machhiwara, Balwinder Kaur was shifted to Arora Neuro Centre, Ludhiana, where she was admitted and remained under treatment. Meaning thereby, at the time of admission in Arora Neuro Centre, Ludhiana, Balwinder Kaur was alive. That is why she was given treatment. But Dr. S.K.Bansal (PW8) from Arora Neuro Centre, Ludhiana, appeared and stated that on 29.5.1999, dead body of Balwinder Kaur was brought. Ex.PM is the certificate issued by Arora Neuro Centre, Ludhiana. As per certificate, there was no BP. Patient was brought dead. Dead body was handed over to relatives. Dr. S.K.Bansal did not state a word that patient was alive and was admitted and given treatment. So, allegation of Jaswinder Singh regarding admission in Arora Neuro Centre, Ludhiana, and treatment is not correct one.

From Arora Neuro Centre, Ludhiana, dead body was brought back to Village Upplan and as per complainant Jarnail Singh, appellants were in a hurry to cremate the dead body and were not interested to get the postmortem examination conducted from the hospital. Then keeping in view the situation, Balbir Singh, Sarpanch, on telephone informed the concerned police station. Then SI Dogar Ram from Police Station, Sahnewal, came and recorded the statement of Jaswinder Singh (Ex.PG). At that time, complainant was not sure that death was due to some poisonous

substance. Surjit Kaur had gone to the house of Jarnail Singh and reported that Balwinder Kaur received injuries by fall from the scooter. Presuming the statement of Surjit Kaur as correct one, Jarnail Singh and his relatives came to village Upplan and that is why they did not raise any objection.

SI Dogar Ram after preparing inquest report had sent the dead body to the hospital, but failed to inspect the place of accident. According to defence version, scooter of Amrik Singh was left at the place of accident. When Balwinder Kaur received injuries by fall from the scooter, then by inspecting the place of accident, SI Dogar Ram should have lifted blood stained earth but no effort to reach the spot and collect blood stained earth. SI Dogar Ram was also of the view that story of Jaswinder Singh was correct one. Balwinder Kaur received injuries by fall from the scooter. Death was accidental and not unnatural. So, after postmortem examination, dead body was cremated and at the time of cremation, no objection from any side.

Viscera was sent to the office of Chemical Examiner, Patiala, and as per report of Chemical Examiner (Ex.PC), Aluminium Phosphide was detected.

Marriage of Balwinder Kaur with Jaswinder Singh was solemnised on 7.2.1998. Unnatural death was on 29.5.1999. That means, unnatural death within 7 years from the date of marriage. Unnatural death was in the house of appellants. Conviction of the appellants is under Section 304-B IPC. Section 304-B IPC is reporduced as under:-

> "**304-B Dowry death.-** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage

and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.”

Under Section 113-B of Indian Evidence Act, presumption of dowry death against the appellants. Section 113-B IPC of the Act is reproduced as under:-

“**113-B. Presumption as to dowry death.-** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

As discussed earlier, unnatural death within 7 years from the date of marriage at the in-laws' house. Third ingredient is as to whether harassment on account of dowry soon before death. Jarnail Singh and his son while appearing in Court, then stated that 4 months earlier to the occurrence, cousin brother of Jaswinder Singh was married and his in-laws gave sufficient dowry. After his marriage, appellants started harassing Balwinder Kaur for want of dowry. Rs.20,000/- was demanded for the house. Payment was made to Balwinder Kaur. Balwinder Kaur gave birth to her son in the month of December, 1998, in Civil Hospital, Samrala. At the time of delivery, she was at her parental house but at the time of Lohri festival, appellants demanded cooler and fridge. Demand of cooler and fridge was brought to the notice of his sons by Jarnail Singh, complainant.

Then sons replied that demand was to be considered at the time of Lohri. One week before death, Balwinder Kaur informed her parents that Kesar Singh had thrown plate of chapatis on her face and later on, felt sorry. She was requested not to bring the incident to the notice of her parents. Jarnail Singh in cross-examination admitted that no complaint to SSP, Ludhiana, or any other authority regarding harassment for want of dowry. He cannot tell whether Dilbagh Singh, Sarpanch of his village, was present at the time of statement of Jaswinder Singh. Suggestion was given to Jarnail Singh and his son that Balwinder Kaur had a fall from the scooter and received injuries. Jarnail Singh and Satpal Singh were not present at the time of occurrence. They came to the house of the appellants as per information supplied by Surjit Kaur but as discussed earlier, story qua accident is not natural one because minor son aged about 6 months was also on the same scooter with Balwinder Kaur. If Balwinder Kaur had a fall from the scooter and received injuries, then why not minor son. Appellants when examined under Section 313 Cr.P.C., then did not state a word that near village Panjetha, Balwinder Kaur had a fall from the scooter. After that, Balwinder Kaur was shifted to Indira Hospital, Machhiwara, with the help of Amrik Singh and from Indira Hospital, Machhiwara, by arranging a car, Balwinder Kaur was being shifted to Arora Neuro Centre, Ludhiana. On the way of Arora Neuro Centre, Ludhiana, Balwinder Kaur had succumbed to her injuries. Amrik Singh from Indira Hospital, Machhiwara, came back to village Upplan and had informed family members of Jaswinder Singh. After that, Surjit Kaur had gone to Village Chhotran to inform parents of Balwinder Kaur that Balwinder Kaur received injuries by fall from the scooter. Not a word was stated by the appellants that minor son was also

with Balwinder Kaur. If minor son was with Balwinder Kaur on the same scooter, whether he received injuries or not and if minor son was also with Balwinder Kaur when she was shifted to Indira Hospital, Machhiwara, then where minor son had gone, whether he was brought to Village Upplan by Amrik Singh or minor son along with Balwinder Kaur in the same car was shifted to Arora Neuro Centre, Ludhiana. When Balwinder Kaur had number of injuries on her person and the injuries were bleeding, then clothes worn by Amrik Singh should have been stained with blood. Blood stained clothes not produced before the police. Blood stained earth was not lifted from the place of occurrence. Nothing on the file where the scooter had gone. All this shows that story regarding accident was concocted. Minor discrepancies in the statements of Jarnail Singh and Satpal Singh are not fatal because in Arora Neuro Centre, Ludhiana, or at the time of postmortem examination or cremation, complainant party presumed the statement of Surjit Kaur qua accident as genuine one. When report from the Chemical Examiner was received and Aluminium Phosphide was detected, then matter was brought to the notice of police that during life time, Balwinder Kaur was compelled to bring Rs.20,000/- for the house and at one time, there was a demand of cooler and fridge. One week before the occurrence, Kesar Singh had thrown plate of chapatis on the face of deceased and later on, felt sorry. She was requested not to bring the incident to the notice of her parents. Payment of Rs.20,000, demand of cooler and fridge and incident of one week earlier to the occurrence, show that soon before the death, deceased was harassed for want of dowry. Aluminium Phosphide was noticed as per report of Chemical Examiner but no suggestion how poisonous substance was consumed by the deceased. No

case of the appellants that deceased was not keeping good health or was under depression and had committed suicide. When deceased was having minor son aged about 6 months and marriage was in the month of February, 1998, then presumption is that poisonous substance was administered by the appellants and injuries were caused and to cover up the story, story was concocted that injuries were received in road side accident. If we presume that injuries were received in road side accident, then no explanation how poisonous substance was noticed by the laboratory.

Learned counsel for the appellants argued that quantity of Aluminium Phosphide was not mentioned by the laboratory. By simply reporting presence of Aluminium Phosphide, appellants are not to be convicted under Section 304-B IPC. In support of this contention, reliance was placed on the following authorities:-

"1. 1957 Crl.L.J. 930, Hanumantha Rao, petitioner;

2. 1958 Cr.L.J. 1, State vs. Fateh Bahadur and others;

3. AIR 1988 SC 1011, Bhupinder Singh vs. State of Punjab;

4. 1992 Cr.L.J. 4043, Jasbir Kaur vs. State of Punjab;

5. 2002 Cr.L.J. 625, Sanjay Goel vs. State of UP;

6. 2002 Cr.L.J. 4703, Jaipal vs. State of Haryana and.

7. 2010(3) RCR (Crl.) 112, Anita vs. State of Haryana."

In Hanumantha Rao's case (supra), charge was under Section 302 IPC by poisoning the deceased with sodium nitrite, the lethal dose of which was about 20 to 30 grains, and only one grain of the poison was detected in the viscera of the deceased. Benefit of doubt arising from the absence of proof that the lethal dose must have been administered by the accused has to be given to him. Conviction and sentence under Section 302

IPC was set aside but the accused was convicted under Section 328 IPC. But in the present case, Aluminium Phosphide was detected. Number of injuries were also noticed on the person of the deceased. Story regarding accident not genuine one. No authority was cited by learned defence counsel that lethal dose was 5 grains or 10 grains or 20 grains.

In State vs. Fateh Bahadur's case (supra), Hon'ble High Court observed that in case of arsenic poisoning, prosecution is to prove that a lethal dose of arsenic, i.e., 2 grains or upward had been administered. Arsenic is used as a medicine in all manner of disposes. It is therefore impossible to take the mere evidence that arsenic was detected as sufficient to prove conclusively that death was from arsenic poisoning. The Court can find any individual guilty of murder by the administration of arsenic that a complete analysis should be done. Given the necessary knowledge and the necessary instruments, modern science has no difficulty in coming to a conclusion as to the approximate quantity administered. But as discussed earlier, learned defence counsel failed to cite any authority as to what should be the quantity of lethal dose, i.e., in case of Aluminium Phosphide, lethal dose is 5 grains or 10 grains or 20 grains or 1 grain or 2 grains.

In Bhupinder Singh's case (supra), murder by poisoning-Report of Chemical Examiner to the effect that death was by poisoning. Report of Chemical Examiner established beyond doubt that victim died of organo phosphorous compound poisoning. Accused had an opportunity to administer that poison. Postmortem report giving the description of injuries found on the body of the deceased defined all doubts about the theory of suicide. Injuries found on the victim's body were such which could have been caused while she resisted the poison being administered to her.

Accused was rightly convicted for committing murder. In the present case also, Aluminium Phosphide, a pesticide, was detected. Death was at the in-laws' house.

In Jasbir Kaur's case (supra), murder case- case based on circumstantial evidence- death due to poisoning- son of deceased, aged about 12 years, deposed that one of the accused in the kitchen requested him to take glass of tea and provide to his mother (deceased)- entire glassful swallowed in presence of son without any sign of distaste though poison in question tastes bitter- witness coming out with aforesaid version only after 2-3 days- two accused were in the kitchen but no evidence as to who had prepared the tea- Poison deadly when consumed in certain dose- Observed that version of sole witness, if accepted, then could not be concluded that tea contained deadly dose of poison- Cause of death cannot be directly result of consuming tea. Thus, there were many missing links in the prosecution that it was a case of murder, but facts of the present case are different from the facts of aforesaid case. In the case in hand, there was no eye witness whereas in the above cited authority, there was an eye witness, i.e., young boy aged 12 years, son of deceased, but story regarding administration of poisonous substance was not accepted in view of the statement of eye witness.

In Sanjay Goel's case (supra), accused was in love with the deceased and wanted to marry with her but deceased have lost interest and disliked him but not completely decided against him. Parents of the deceased were also reluctant to their relationship. Accused was with the deceased in her room in hostel for three hours prior to occurrence. Both consumed arsenic poison resulting in death of deceased, however, accused

survived because of his strong physique and vomitting. Postmortem report negatives completely the administration perforce of arsenic by accused to deceased. Prosecution failed to prove quantum of arsenic poison consumed or administered. Then held that accused was guilty of offence under Section 304, Part-II IPC because knowledge that consumption of poison would result in death of deceased was very much present there. But facts of the present case differ from the facts of above cited authority. No doubt, quantum of Aluminium Phosphide was not mentioned in the report of Chemical Examiner but no defence version of the appellants that deceased had consumed Aluminium Phosphide by mistake or due to frustration. No case of the prosecution that poisonous substance was administered by mixing the same in tea etc. or poisonous substance was administered by force. At the time of death, Balwinder Kaur was staying with the appellants and the appellants are to explain how and under what circumstances, poisonous substance was consumed or administered. To know about the percentage Chemical Examiner could be summoned in defence.

In Jaipal's case (supra), allegation was that Aluminium Phosphide was administered to the deceased-Medical evidence that congestion of organs of deceased as found could be due to other reasons-Due to pungent smell celphos could not be taken accidentally-Doctor who attended the deceased first stated that symptoms present in deceased could be that as in case of food poisoning etc., but in the present case, doctor did not state a word that symptoms noticed were like that of food poisoning etc. No allegation of the appellants that deceased by consuming something was complaining food poisoning. If there was a complaint of food poisoning, then deceased should have been shifted to the nearest hospital for medical

aid. As per medical evidence, deceased was hale and hearty but received injuries by fall as per defence.

In Anita's case (supra), on 21.9.2004, Smt. Anita came in the evening after three days. On 22.9.2004 in the evening, Smt. Anita told that she would go anywhere and would not stay in the house. Prem Devi disclosed this fact to other family members. Family members gathered in the morning and were preparing to leave Anita to her parental house at Luhari. Vehicle was arranged. In the meantime, her (Prem Devi) brother Mangal Singh and son Mahesh Singh came. Prem Devi asked Anita to prepare tea. Tea was prepared by Anita and brought two cups. One cup of tea was drunk by her son Mahesh and another by Bhagirath @ Pappu. Mangal Singh did not take tea. Thereafter, Anita along with some residents of the village had left for Village Lohari in a vehicle. Tea was taken at 11.30 AM but after 10 minutes, Mahesh Singh and Bhagirath became unconscious. There was raula. Mahesh Singh and Bhagirath were shifted to the hospital and thereafter she came to know that her son Mahesh Singh has expired. Cause of death was mixing some poisonous substance in the tea by Anita. Then Hon'ble Division Bench observed that on the basis of evidence on the file, report of FSL can be held not correct one because Aluminium Phosphide cannot be administered by deceit because it emanates highly pugnant smell as per published medical works. Report of FSL is contrary to direct medical evidence. There were no symptoms of Aluminium Phosphide, either in the postmortem examination or in the medico legal report. Chemical Examiner merely gives report of chemical examination of the substance sent to the laboratory. Chemical Examiner not to opine as to what was cause of death but facts of the present case differ

from the facts of above cited authority. In the present case, no one had seen the appellants while administering poisonous substance. Complainant party remained silent presuming the defence version as correct one that Balwinder Kaur received injuries by fall from the scooter but only after report of Chemical Examiner, complainant party lodged protest that before death, appellants used to misbehave and maltreat the deceased for want of dowry. Story regarding receipt of injuries by fall not genuine one.

At the time of commission of crime, complainant party lodged protest, that is why, Balbir Singh, Sarpanch, on telephone informed the police. After arrival of police, inquest report was prepared and dead body was sent to the hospital for postmortem examination. At the time of occurrence, complainant party was not sure that death was due to Aluminium Phosphide or the injuries were received in road side accident. As per story put forward by the appellants, complainant party remained silent but when report of Chemical Examiner was received, then matter was brought to the notice of police. During life time, deceased was being harassed for want of dowry. No explanation from the side of the appellants as to how Aluminium Phosphide was detected. Story regarding injuries was concocted. Possibility of administration of poisonous substance and injuries when there was resistance from the side of deceased cannot be ruled out. Under Section 113-B of Indian Evidence Act, presumption of dowry death was against the appellants. When minor child aged about 6 months was with the deceased at the time of accident, but no explanation where that minor child had gone. According to the witness, namely, Amrik Singh, after accident, minor child was also shifted to Indira Hospital, Machhiwara. From Indira Hospital, Machhiwara, Balwinder Kaur was shifted to Arora

Neuro Centre, Ludhiana. Amrik Singh came back to village Upplan to inform family members of the appellants but he was not clear where the minor child was left. So, story regarding accident was concocted. In fact, poisonous substance was administered by the appellants and when there was resistance, then injuries were caused. In case Chemical Examiner failed to mention as to what was the quantity of Aluminium Phosphide, then on this short ground, entire story is not to be ignored.

No other submission was put forward.

In the light of above discussion, I am of the opinion that evidence on the file was rightly scrutinized by the trial Court. There is no illegality or infirmity in the impugned judgment and the same is upheld.

Appeal being without merit is dismissed.

Crl.Revision No.1800 of 2002 is also dismissed.

Appellants are on bail. They are directed to surrender before the concerned authority to undergo imprisonment as ordered by the trial Court, failing which, concerned authority/CJM, Ludhiana, to issue re-arrest warrants to undergo the remaining period of sentence.

20 .9.2010 **(JORA SINGH)**
pk **JUDGE**